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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

POLAND*

[7 May 1996]

* The initial report submitted by the Government of Poland is contained in document CAT/C/9/Add.13; for its consideration by the Committee, see documents CAT/C/SR.160, 161 and 161/Add.1 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), paras. 66-73.

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Introduction

1. This second periodic report on the implementation by Poland of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment covers the period since the submission of Poland's initial report and takes into consideration the conclusions reached by the Committee against Torture on 11 November 1993, at its eleventh session. This period is characterized by continued changes in legislation made to create and strengthen legal guarantees to ensure respect for the civil and political rights that are the essential components of a State subject to the rule of law.

2. During this period, Poland ratified the European Convention on Human Rights and established contacts with international non-governmental organizations (NGOs) such as Amnesty International, the Helsinki Federation of Human Rights and Interpol. The implementation of the provisions of the Convention has become an enduring and very important factor in the process of transforming the legal system and the way in which it is applied. Below is an analysis of this process.

3. A report on respect for the fundamental rights of the inmates of reformatories and children's shelters, prepared in March 1994 by the Office of the Ombudsman and covering 1993 and early 1994, indicates that cases of illegal use of physical force against minors occurred during that period. For the preparation of the study, 288 inmates in 14 rehabilitation establishments, or 17.7 per cent of all reformatory inmates, were questioned. The inmates' descriptions suggest the need to divide cases of violation of physical integrity into two categories: striking once (striking) and striking repeatedly (beating). The distinction made is useful for describing the injuries sustained by the inmates as well as the degree of the perpetrators' guilt.

4. The table below contains general data on cases of physical abuse of reformatory inmates:

Violation of inmates' physical integrity

No.	Location of establishment	Number of cases		Number of inmates		Per cent of inmates struck or beaten among inmates questioned
		Struck	Beaten	Questioned	Struck or beaten	
1.	Bialystok	7	2	28	9	32.1
2.	Dominów	-	-	30	-	-
3.	Glogów	3	-	15	3	20.0
4.	Grodzisk Wlkp.	2	-	14	2	14.0
5.	Jerzmanice Zdrój	-	5	17	2	12.0
6.	Ostrowiec Św.	-	-	14	-	-
7.	Poznań	-	4	19	3	15.6
8.	Sadowice	3	2	27	5	18.5
9.	Stawiszyn	4	2	16	6	38.0
10.	Studzieniec	1	-	31	1	3.2
11.	Świdnica	10	3	25	9	36.0
12.	Trzemeszno	2	-	14	2	14.0
13.	W-wa Falenica	-	-	12	-	-
14.	W-wa Okęcie	2	-	26	2	8.0
	Total	34	18	288	42	14.6

5. In no case of violation of a child's physical integrity figuring in the table was the minor left with serious bodily injuries. The injuries generally consisted of bruises and scratches. There was one exception, which occurred in the Świdnica reformatory on 1 January 1994. One of the instructors slapped a child over the face for disobeying. The minor lost his balance and hit his face against the wall, breaking his nose.

6. All cases of violation of the physical integrity of children in reformatories have been examined by the Juvenile Institutions Service in the Ministry of Justice. The review also focused on the justification and appropriateness of the preparatory and disciplinary investigation proceedings undertaken by the institutions' directors.

7. The analysis showed that the teaching corps and staff were subjected to the following penalties:

Disciplinary proceedings were instituted against five employees, culminating in their dismissal, pursuant to article 52 of the Labour Code;

Proceedings were instituted with the public prosecutor (broken nose); case pending;

Preparatory investigation proceedings were instituted in seven cases to determine the names of those responsible for beatings;

Two teachers received warnings for using inappropriate educational methods.

8. No cases of torture of detainees by prison staff were reported in 1993. During that period, one prison officer received a disciplinary sanction, namely assignment to a lower grade for a disciplinary offence qualified as "unlawful behaviour towards detainees".

9. In addition to the information contained in the preceding report, the Court of Appeals in Gdansk convicted 10 former prison officers of unlawful behaviour towards detainees following the suppression of the 1989 uprising. Penalties ranged from 8 to 18 months of deprivation of freedom, with a two-year conditional deferral of sentence. All those convicted were banned from working for the prison service for one year. However, none of them has returned to the prison service.

Article 2

10. The legislative, administrative and judicial machinery in place effectively prevent torture throughout the country. The Police Act of 4 April 1990 and the State Security Office Act of 6 April 1990 lay down specific rules for the disciplinary and criminal responsibility of officials of these institutions. The revision of the criminal legislation under way introduces many new arrangements for further guaranteeing the implementation of the provisions of the Convention.

11. The draft new Penal Code makes no provision for the death penalty, based on the principle that the death penalty is incompatible with human dignity, the contemporary system of values and Additional Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. The penalty of life imprisonment, which can satisfy society's desire for justice in respect of the most serious crimes, can effectively protect the public against the worst offences. To a certain extent, such protection can also be afforded through the penalty of 25 years' deprivation of freedom.

13. It should be emphasized that although the death penalty does exist, it has not actually been applied in recent years.

14. During the period 1989-1993, the Polish courts did not pronounce a single death sentence in final judgement. In the first half of 1994, one person was sentenced to death for an extremely cruel murder, but that decision is not yet final.

15. The draft new Penal Code also provides for the liberalization of penalties and the limitation of the legal minimum period for applying a penalty of deprivation of freedom or prevention measures.

16. The draft Code of Criminal Procedure provides for an important change in preparatory proceedings, introducing participation by a court at this stage of the trial, extension of the scope of personal participation by the public prosecutor in the proceedings and expansion of the public prosecutor's scope of supervision over the acts of other bodies involved in the proceedings.

17. The draft also reinforces the rights and guarantees of the parties to the preparatory proceedings, in particular by placing the defendant and the victim on an equal footing at this stage.

18. One result of this approach is the right granted to the parties to file a complaint against a decision denying them or their representatives participation in the proceedings and not allowing the accused to ask to be questioned in the presence of his counsel.

19. In accordance with the principle of separation of the prosecutorial and judgemental functions, the draft has not taken the approach that the investigation shall be conducted directly by the examining magistrate, but provides for participation by the court in the preparatory proceedings if the parties' procedural safeguards so require. These involve, in particular, decisions on complaints and certain other acts by the bodies conducting preparatory proceedings defined by law. In addition to measures for the resolution of complaints, the court is competent to take decisions on: ordering or extension of pre-trial detention, confiscation of an object or recovery of a sum of money placed as security, ordering of monitoring and recording of telephone conversations and confirmation of exceptional decisions by the public prosecutor in that connection, placing of an accused person under psychiatric observation in a medical establishment or extension of such observation, and granting or withdrawal of safe conducts.

20. The court's new role in preparatory proceedings is also reflected in the provisions of the draft that allow for the possibility of questioning before the court at this stage of the proceedings. One of the parties or a procedural body may ask for a witness to be heard before the court in the event that it might not be possible to hear the witness otherwise, and the public prosecutor may also request that an accused person should be questioned in this way.

21. An accused person may also ask to be questioned before the court in the framework of preparatory proceedings.

22. The court's control over the preparatory proceedings, important to ensure that procedural guarantees are observed, is explicitly provided by the right granted to the injured person to lodge a complaint with the court against a refusal to open an inquiry or investigation or the examining magistrate who filed an indictment in respect of the offence, and the right granted to the parties to lodge a complaint against a decision to dismiss preparatory proceedings.

23. If the court annuls a decision to dismiss or a refusal to open proceedings, it may take a decision - binding on the public prosecutor - as to which circumstances shall be examined or action taken. If the public prosecutor still finds no basis for filing an indictment, he shall again order the proceedings dismissed or refuse to open an inquiry or investigation. This decision can no longer be challenged, and the injured person is free to take the initiative of filing an indictment with the court as a subsidiary prosecutor.

Article 3

24. The procedure described in Poland's initial report for considering applications for the extradition of a person sought by a foreign State for the purpose of instituting criminal proceedings against him or of making him serve the penalty imposed demonstrates that the existing provisions of the Code of Criminal Procedure fully guarantee compliance with the provision contained in article 3 of the Convention. Proof of this is the fact that the opinion on the application made by the foreign State is issued by an independent higher court, namely the voivodeship court, which takes into account the explanations provided by the person whose extradition is sought. The draft Code of Criminal Procedure in preparation provides that the defence counsel is entitled to participate in the hearing at which the voivodeship court hands down its decision on the foreign country's application. It also provides that, in the event of a decision to refuse extradition, the extradition cannot be carried out.

25. A complaint may be filed in respect of a court decision involving extradition. The court transmits its final decision and the case file to the Minister of Justice, who notifies the competent organ of the foreign country.

Article 4

26. The draft Penal Code provides for the obligation set forth in the Convention to establish penalties for acts of violence or unlawful threats and

physical or mental ill-treatment. Draft article 248 provides that anyone who uses violence or unlawful threats for the purpose of influencing a witness, expert, translator or defendant, or, consequently violates that person's physical integrity, shall be liable to a penalty of deprivation of freedom of three months to five years.

27. According to draft article 249, any public servant who uses violence, unlawful threats or any other type of physical or mental ill-treatment directed against another person for the purpose of obtaining depositions, explanations or statements, shall be liable to a penalty of deprivation of freedom of six months to eight years. The scope of this article is even broader than that of the Convention's recommendations.

28. A person deprived of his freedom is also protected against torture, pursuant to the obligation laid down in the Convention. Article 250, paragraph 1, of the draft provides for a penalty of deprivation of freedom of three months to five years for anyone who physically or mentally abuses a person lawfully deprived of his freedom. This provision relates to both public servants and fellow detainees. Article 250, paragraph 2, lays down the same penalty against a public servant for tolerating the ill-treatment of a person deprived of his freedom who is subject to the public servants' supervision.

29. From a comparison of the penalties laid down for these acts with the penalties stipulated for similar offences in the draft Penal Code, it can be concluded that they are adequate and that they give primary consideration to the serious nature of the acts in question.

Article 5

30. The Penal Code in force complies with the rule contained in this provision of the Convention, as it establishes the territorial principle in the recognition of the jurisdiction of Polish criminal law.

31. Article 3 of the Penal Code provides that Polish criminal law applies to the perpetrators of offences committed in the territory of Poland and on Polish ships at sea or on Polish aircraft. Polish criminal law also applies to Polish citizens who have committed an offence abroad and to foreigners who have committed an offence abroad, responsibility for which depends upon the recognition of such an act as an offence by the law in force in the territory where the act was committed. Apart from the provisions in force in the territory where the offence was committed, Polish criminal law applies to foreigners who have committed offences in respect of which criminal proceedings are instituted pursuant to international agreements.

32. The draft new Penal Code takes as its guiding principle that Polish criminal law shall apply to both Polish citizens and foreigners who have committed an offence abroad. However, foreigners' responsibility is only engaged if they have committed an offence against the interests of the Polish State, a Polish citizen, a Polish legal entity or a Polish administrative division, or have committed another offence carrying a penalty of over two years' deprivation of freedom, provided that the perpetrator is in Polish territory and that no decision to extradite him to the judicial authorities of

the place where the offence was committed has been handed down. For criminals are increasingly being extradited to their countries of origin pursuant to the rules of extradition. According to the draft, the general requirement for responsibility is the binding force of the prohibition in the place where the act was committed. The court may consider existing differences between the law in the place where the act was committed and Polish law, to the perpetrator's benefit. This requirement does not apply to Polish public servants who have committed an offence in the performance of their duties or to persons who have committed an offence in a territory that is not subject to a government authority. Regardless of the provisions in force in the place where the offence was committed, Polish criminal law shall apply to a Polish citizen or a foreigner who has committed:

(i) An offence against the internal or external security of the Polish State;

(ii) An offence against the Polish administration or public servants;

(iii) An offence against vital Polish economic interests;

(iv) An offence consisting of false depositions before an organ of the Polish Government.

33. The draft also provides that, regardless of the provisions in force in the place where the offence was committed, Polish criminal law shall apply to Polish citizens and foreigners who are not the subject of extradition procedures, if they have committed abroad an offence which the Polish State is bound to prosecute pursuant to international agreements.

Article 6

34. The rules governing the initiation of criminal proceedings, the arrest of persons charged with an offence and the ordering of pre-trial detention are discussed in the initial report. The provisions of the Code of Criminal Procedure currently in force govern these aspects in conformity with article 6 of the Convention. These involve both the justification for instituting preventive measures and the powers of the bodies ordering them, verification of the grounds for instituting them and the rights of the arrested person immediately to contact the nearest competent representative of the country of which he is a citizen and lodge an appeal against the decisions of the bodies ordering these measures.

35. The draft new Code of Criminal Procedure also provides for amendments to the provisions governing measures of constraint which considerably limit the frequency with which they are ordered in criminal proceedings, in particular arrest and pre-trial detention. The draft pays special attention to the provisions governing preventive measures, including pre-trial detention. The list of such measures was expanded to include:

(a) Suspension of the accused from his duties or from the exercise of his profession or the order to refrain from a particular activity or from

driving particular vehicles, if this is necessary to prevent him from impeding criminal proceedings, for example by removing criminal evidence or committing a repeat offence;

(b) Giving notification to the accused that he is prohibited from leaving the country, perhaps together with the seizure of his passport or another travel document or prohibition of the issue of such a document.

35. The number of preventive measures in the draft has been expanded in order to eliminate the need for pre-trial detention, which has been replaced by other, less severe, measures of constraint. The basic change has been to give the court exclusive competence to order pre-trial detention, removing it from the competence of the public prosecutor. This amendment should further the rights of the individual in criminal proceedings, since it is essential for deprivation of freedom in the context of these proceedings (with the exception of arrests) to be ordered exclusively by an independent organ that meets the condition of impartiality, namely, an organ of justice. This amendment brings Polish law into conformity with the requirements of the International Covenant on Civil and Political Rights, which stipulates that pre-trial detention must be ordered by a judge or other officer authorized by law to exercise judicial power.

37. In conformity with the recommendations laid down in the Covenant, the draft provides for extensive amendments of the provisions governing time-limits for this type of measure of constraint. These time-limits shall apply not only (as is currently the case) to preparatory proceedings but also to proceedings before the court of first instance; they remain in force until the first judgement in the current proceedings has been handed down.

38. Pre-trial detention ordered by the court as part of preparatory proceedings cannot exceed three months in duration. If, owing to the special circumstances of the case, the preparatory proceedings cannot be concluded within that period, pre-trial detention may be extended, at the request of the public prosecutor, by:

(i) The court with jurisdiction in the case - for a period not exceeding six months;

(ii) The higher court - for a longer period if necessary for concluding the preparatory proceedings, which may not exceed nine months in all.

39. The overall duration of pre-trial detention up to and including the handing down of the first judgement by the court of first instance shall not exceed one year and six months and for cases involving a crime, two years.

40. Extensions of pre-trial detention for specific periods beyond those stated above may be ordered only by the Supreme Court, at the request of the court having jurisdiction over the case, and, in the framework of preparatory proceedings, at the request of the Procurator-General if such a need arises due to the suspension of criminal proceedings, extension of psychiatric observation of the accused, extension of the time period provided for the

preparation of an expert opinion in particularly complex cases or the conduct of procedural acts outside the country; pre-trial detention may also be extended if the accused deliberately prolongs the proceedings.

Article 7

41. The rules governing the initiation and conduct of proceedings as well as decisions relating to offences laid down in the Convention, in particular the duty of public institutions to inform the public prosecutor or the police of an offence in respect of which criminal proceedings must be initiated, were described in the initial report.

42. In addition to public institutions, the draft Code of Criminal Procedure lists autonomous institutions as being subject to this duty.

43. The draft provides for some guarantee of due process by granting the person reporting an offence the right to lodge a complaint if no information on the resolution of the case is received within six weeks. Complaints are considered by the public prosecutor or the body supervising the body with which the complaint was filed. All serious ordinary-law offences are considered to be offences covered by the Convention as regards the application of procedural rules and substantive provisions relating to decisions and the enforcement procedure. The provisions in force guarantee fair treatment at all stages of the proceedings for anybody prosecuted for offences covered by the Convention.

Article 8

44. The obligations and principles referred to in article 8 are observed by all public organs that consider applications for extradition. Since the submission of the initial report Poland has acceded to the European Convention on Extradition, signed at Paris on 13 December 1957, whose provisions it strictly observes.

Article 9

45. Judicial assistance in criminal proceedings relating to the offences covered by the Convention is given pursuant to the provisions of articles 519-522 of the Code of Criminal Procedure. The rules for such assistance were described in the initial report.

46. The draft new Code of Criminal Procedure expands the scope of procedural acts in criminal cases that may be conducted in the framework of judicial assistance relating to the communication of legal information, and resolves the controversy surrounding the possibility of disclosing, in hearings before Polish courts, records and evidence collected by the courts or public prosecutor's offices of foreign countries or other competent bodies under their supervision. Such records may be read out at hearings, in accordance with specific rules, provided that they have been drawn up at the request of the Polish court or public prosecutor in a manner consistent with the principles laid down in the legislation of the Republic of Poland.

Article 10

47. Training programmes for civil or military personnel of judicial bodies and other persons who may be involved in the custody, interrogation or other procedures affecting individuals under any form of arrest, detention or deprivation of freedom include materials and information on the prohibition against torture. The standing orders and regulations that define their functions and duties also include the prohibition against torture.

Article 11

48. The initial report contains detailed information on the way in which the State supervises compliance with the rules, instructions and methods laid down for interrogations and with the provisions on the supervision and treatment of persons under any form of detention or deprivation of freedom, in order to prevent any cases of torture. The fact that the provisions of the Convention are respected by all public bodies attests to the effectiveness of this supervision. With the exception of the cases described in the first part of the report, no cases of torture or other cruel, inhuman or degrading treatment or punishment against citizens by public servants were reported in Poland in 1993 or the first quarter of 1994.

Article 12

49. Procedural rules in criminal matters provide all guarantees of prompt and impartial investigations in cases where there is reason to believe that torture has occurred in Polish territory. The initial report contained a detailed description of the basic features of this system.

50. The draft new Code of Criminal Procedure resolves these problems by extending the scope of competence of the public prosecutor to enable him to conduct preparatory proceedings directly, which represents a fundamental guarantee.

51. The draft expands the scope of cases in which an investigation is compulsory and therefore that of cases for which the public prosecutor is bound to conduct the proceedings personally.

52. As before, the police are customarily responsible for the investigation, but the public prosecutor can take it over at any time.

53. The draft also defines in greater detail the process of supervision of the preparatory proceedings by the public prosecutor, extending it to all components of that stage, except those conducted either by the public prosecutor himself or (obviously) by the court, and to the verification procedures. Supervision by the public prosecutor thus covers the steps that precede the opening of the inquiry or investigation, including the verification procedure and the process of preparation of the indictment.

54. The existing and envisaged legal remedies, the professional qualifications of public prosecutors and the rules governing the functioning of the Public Prosecutor's Office such as independence, non-political

character and subordination to the Ministry of Justice, are solid guarantees of compliance with the obligations arising from article 12 of the Convention.

Article 13

55. Under the law in force, any person who states that he has been tortured in Polish territory has the right to complain to the competent authorities with a view to having his complaint promptly and impartially examined. This right is based on the unlimited possibility of denouncing the offence to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons.

Article 14

56. The right of a victim of torture to redress and to fair and adequate compensation is fully guaranteed by the provisions of civil and criminal law.

57. The legal provisions referred to in the initial report constitute the basis for protection of the individual's assets, such as health, freedom and dignity.

58. We should like to add that rehabilitation proceedings relating to the events that occurred during the period from 1944 to 1956, when the security agencies and NKVD officials tortured persons suspected of patriotic and anti-communist activity, are taking place before the Polish courts. The explanations, depositions and statements thus obtained by force were admitted by the courts as evidence of the guilt of accused persons who were convicted and sentenced to death or long terms of imprisonment. These judgements have been annulled as invalid and unjustly convicted persons receive compensation amounting to several million zlotys.

Article 15

59. The Code of Criminal Procedure stipulates that the person being questioned must have an opportunity to express himself freely within the limits established by the specific proceedings; only subsequently may he be asked questions designed to supplement, elucidate or verify the depositions. Article 157 of the Code of Criminal Procedure stipulates that explanations, depositions and statements made in circumstances in which it was impossible for the person concerned to express himself freely may not constitute evidence. The latter provision complies fully with the obligation arising from article 15 of the Convention.

60. The provisions of the draft new Code of Criminal Procedure go a great deal further. Under the draft, it is prohibited to ask questions that might mislead the person being questioned or to prompt a particular answer; the body conducting the questioning does not authorize such questions. It is inadmissible:

(i) To influence the statements of a person being questioned by using coercion or unlawful threats or by deliberately misleading him;

(ii) To use hypnosis or chemical or technical products that influence the mental processes of the person being questioned or are designed to control his body's unconscious reactions to the questioning.

61. Explanations, depositions and declarations made in circumstances in which it was impossible for the person concerned to express himself freely may not constitute evidence.

Article 16

62. The draft new Penal Code introduces, in the chapter dealing with offences against the administration of justice, a category of offences consisting of recourse to violence, unlawful threats or physical or mental maltreatment by a public servant against another person in order to obtain specific depositions, explanations or statements. Such an act is liable to a term of imprisonment of from six months to eight years.

63. In addition, the draft provides that a person who physically or mentally maltreats a person lawfully deprived of his liberty or a public servant who allows such an act to be committed is liable to a term of imprisonment of from three months to five years.

64. This report has been compiled in pursuance of article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with the note by the Secretary-General of the United Nations.